

The following comments are responsive to the Federal Communications Commission Media Bureau Proceeding 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking. It is my hope that you will adopt badly needed rule changes in order to provide for the highest and best use of television broadcasting for all Americans. In my case, existing rules and regulations severely limit my viewing options, especially in the area of small dish satellite delivery systems.

I wish to address in particular the following paragraphs under the heading "III. Discussion, B. Nature and Amount of Community-Responsive Programming, 3. Issues for Commission action" on pages 23 through 26.

46. Television Market Definitions/Cable Broadcast Carriage. Another way that we intend to increase access to community-responsive programming is by examining our rules to remedy the infrequent but significant situations in which cable and satellite subscribers often do not receive the local news and information provided by an in-state television station, because our rules effectively require carriage of an out-of-state station.<sup>110</sup> Cable or satellite subscribers thus cannot access a station assigned to another "Designated Market Area" ("DMA"), as that concept is employed in our rules, even if the station is located in their state. We intend to begin a proceeding to propose rules to promote access by cable and satellite subscribers to the programming of television broadcast stations licensed to communities in the state in which they live.

<sup>110</sup> See 47 C.F.R. §§76.55(cable); 76.66 (satellite).

Comment: We live in the Ottumwa, Iowa - Kirksville, Missouri DMA which consists of 6 counties in Missouri and 4 counties in Iowa. Iowa viewers have little interest in or need for Missouri news and conversely, Missouri viewers have little interest in or need for Iowa news. Consequently, viewers receive only about half as much relevant news as they would if the DMA was located in one state.

The FCC list of "Significantly Viewed TV Stations" -

<http://www.fcc.gov/mb/significantviewedstations.pdf> reveals that viewers in the Ottumwa area choose to view several more distant, "out of DMA" signals from the Des Moines, Iowa DMA. This 464 page document reveals that there are many other areas in the United States that are experiencing similar dissatisfaction with their available "in DMA" offerings. It is obvious that the situation in which we find ourselves in Ottumwa, Iowa is not unique and affects a large number of cities in the United States. We urge the Commission to allow reception

of the closest "in state", "out of DMA" network signals on satellite receivers when there is no "in DMA" network signal available, regardless of whether or not the satellite provider offers local-into-local programming.

47. Under the Communications Act, cable systems must carry the signals of local commercial and noncommercial broadcast stations in their local markets.<sup>111</sup> Since 1996, the

Commission generally has looked to Nielsen Media Research Company's DMAs in defining a television broadcast station's local market,<sup>112</sup> except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market.<sup>113</sup>

<sup>111</sup> See 47 U.S.C. § 534 (local commercial television stations); 47 U.S.C. § 535 (noncommercial educational television stations); Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues, Report and Order, 8 FCC Rcd 2965 (1993) ("Cable Must Carry Order"). See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994) ("Cable Must Carry Reconsideration Order").

<sup>112</sup> See Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201 (1996); Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999). See also 47 C.F.R. § 76.55(e).

<sup>113</sup> 47 U.S.C. § 534(h)(1)(C). These market additions and deletions are called "market modifications" and apply only to commercial stations. Noncommercial educational ("NCE") stations are eligible for mandatory cable carriage based on their geographic relationship to a cable system's headend, not on commercial publications' delineations of local market areas. See 47 U.S.C. § 535(l)(2) (defining "qualified local noncommercial educational television station" as such stations licensed to a community within 50 miles of the principal headend of the cable system or whose Grade B service contour, as defined in 47 C.F.R. § 73.683(a), encompasses the principal headend of the cable system). See also 47 C.F.R. § 76.55(b).

Comment: The Commission's reliance upon DMA's is ill advised. According to the Nielsen Media Research Company's own internet web page, "We use these DMAs solely in measuring who is watching what within a given area. However, DMAs were never intended to be used for the purposes that other companies [and the FCC?] are now using them." <http://tinyurl.com/2vr5bv> We urge the Commission to allow reception of the closest neighboring "in state", "out of DMA" network signals on satellite receivers when there is no "in DMA" network signal available, regardless of whether or not the satellite provider offers local-into-local programming.

48. Satellite carriage of local broadcast stations differs from cable carriage in that there is no statutory "must carry" requirement, except in Alaska and Hawaii;<sup>114</sup> rather, satellite carriage obligations generally arise when a carrier relies on the statutory copyright license to offer

"local-into-local" service in a market.<sup>115</sup> As with cable carriage, a television station's local market generally is the DMA in which it is located.<sup>116</sup>

<sup>114</sup> See 47 U.S.C. § 338(a)(4). See also Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act, Report and Order, 20 FCC Rcd. 14242 (2005); 47 C.F.R. § 76.66(b)(2).

<sup>115</sup> A satellite carrier provides "local-into-local" service when it retransmits a local television station's signal back into the local market of the television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6). Local-into-local service is designed to increase the local programming choices available to television households by allowing satellite operators to provide the signal of a television station to subscribers residing in the station's local market.

<sup>116</sup> 47 U.S.C. § 338(k)(3) defines the term "local market" by using the definition found in 17 U.S.C. § 122(j)(2): "The term 'local market,' in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and - (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station."

Comment: We urge a statutory requirement that satellite providers "may carry" the closest neighboring "in state", "out of DMA" network signals when there is no "in DMA" network signal available, regardless of whether or not the satellite provider offers "local-into-local" programming.

49. DMAs describe each television market in terms of a unique geographic area and are based on measured viewing patterns.<sup>117</sup> In a small group of identifiable cases, however, general reliance on DMAs to define a station's market may not provide viewers with the most local programming. Certain DMAs cross state borders, and in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station.<sup>118</sup> Such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance - particularly local weather and other emergency information and local news and electoral and public affairs - from a station located in the state in which they live.

<sup>117</sup> See 17 U.S.C. § 122(j)(2)(A)-(C). There are 210 DMAs that encompass all counties in the 50 United States, except for certain areas in Alaska. See Nielsen Station Index Directory and Nielsen

Station Index United States Television Household Estimates (2006-07 ed.). Congress created a special local market definition for these counties in Alaska. See 17 U.S.C. § 122(j)(2)(D).

118 A review of the 210 Nielsen DMAs shows that more than 400 counties are in DMAs in which all or virtually all the stations deemed "local" are actually located in a different state. More than one-third of these counties are in DMAs that do not have any stations assigned by Nielsen from the home state. See R.R. Bowker, *Broadcasting & Cable Yearbook* 2008, B-146-230 (2007).

Comment: See Comments in Paragraph 46. We urge the Commission to allow reception of the closest "in state", "out of DMA" network signals on satellite receivers when there is no "in DMA" network signal available, regardless of whether or not the satellite provider offers local-into-local programming.

50. In particular, with respect to cable carriage, Section 614(b)(5) of the Communications Act provides that "a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local television station which is carried on the cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network . . . ."119 A parallel rule applies to the carriage of NCE station signals.120 The Commission concluded in implementing this rule that when such duplication occurs, if the cable operator chooses to carry only one of the duplicating stations, it must carry the station whose community of license is closest to the cable system's principal headend.121 In general, this rule has ensured that cable subscribers have access to the station that is most local for them.122 However, in some cases, the station that is geographically closest to the headend is in a different state from the state in which the subscriber lives.123 This situation may occur when a cable system straddles a state line within one DMA or when a cable system straddles two DMAs. The situation is different with respect to satellite carriage, but it is no less problematic. Unlike rules governing cable carriage, current Commission rules governing satellite carriage of local broadcast stations do not provide for market modifications, resulting in a rigid adherence to DMA designations.124 We agree with commenters that this situation should be remedied and, accordingly, we will commence a rulemaking proceeding to address the need to ensure that all cable and satellite subscribers have access to television broadcast stations licensed to communities within the viewers' home state. This issue will be addressed in that rulemaking proceeding, rather than in this proceeding.

119 47 U.S.C. § 534(b)(5).

120 See 47 U.S.C. §§ 535(b)(3)(C) and 535(e).

121 See *Cable Must Carry Order*, 8 FCC Rcd at 2979-81 ¶¶ 55-56. See also 47 C.F.R. § 76.56(b)(4)(ii).

122 We note that there is nothing in the statute that would preclude a cable operator from carrying duplicating stations and considering both stations as local. See, e.g., 47 U.S.C. §§ 533(b)(3)(C), 535(e). The statute merely provides that the cable system is not required to carry both.

123 For example, under our current rule, several cable systems serving subscribers in Indiana are required to carry stations licensed to communities in Illinois, Ohio, and Kentucky, rather than stations located in Indiana because the out-of-state stations are closer to the cable headends than stations licensed to communities in Indiana.

124 See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Report and Order, 16 FCC Rcd 1918, 1937 ¶ 41 (2000).

Comment: We urge the Commission to allow reception of the closest "in state", "out of DMA" network signals on satellite receivers when there is no "in DMA" network signal available, regardless of whether or not the satellite provider offers local-into-local programming.

Thanking you in advance, I remain

Sincerely,

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